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NEW APPLICATION

ATTN: DON UNTHAN



0000093527

ORIGINAL

ARIZONA CORPORATION COMMISSION

APPLICATION FOR APPROVAL OF THE SALE OF ASSETS AND/OR
 FOR CANCELLATION OF THE CERTIFICATE OF CONVENIENCE
 AND NECESSITY
 DOCKETED

FEB 17 2009

WATER AND/OR SEWER

DOCKETED BY

ME

General Information

W-02483A-09-0064
 W-20653A-09-0064

The attached forms have been prepared by the Utilities Division of the Arizona Corporation Commission to assist Applicants filing an application for approval of the sale of assets and/or for the cancellation of the Certificate of Convenience and Necessity. The information required on this application corresponds with Arizona Revised Statutes Section 40-285 and the Arizona Administrative Code R14-2-402.B.

Use of this application is suggested unless a formal pleading format is used by an attorney. The information requested in this application must be included within the pleading.

Attachment "A" is a sample letter of transmittal addressed to the Utilities Division Docket Control Center. Please add information to the letter indicating the purpose and reasons for the application. This format should be used unless you are using a Company letterhead. Place this letter at the beginning of the application. Keep this instruction sheet for your information. Do not attach it to the application.

Instructions

1. Complete all pages accurately and attach all required documents. This will expedite the processing of the application.
2. Complete all the items that apply to your utility. If an item requested does not apply, mark it "not applicable" (N/A). If you do not accurately complete an item, the processing of your application could be delayed.
3. If the space provided is insufficient, put the information on a separate sheet of paper and label it clearly.
4. If an item is to be filed at a later date, mark the item "to be late filed" and give the date by which it will be filed.
5. Have the application notarized.
6. Submit an original and thirteen (13) copies of this application.

FILED BY 7002
 AZ CORP COMMISSION

2009 FEB 17 A 10:30

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ARIZONA CORPORATION COMMISSION**APPLICATION FOR APPROVAL OF THE SALE OF ASSETS AND/OR
FOR CANCELLATION OF THE CERTIFICATE OF CONVENIENCE
AND NECESSITY****WATER AND/OR SEWER**A. The name, address and telephone number of the Applicant is:DONALD J. UNTHANK11802 E. BLUE WASH RD.CAVE CREEK, AZ 85331

B. If doing business under a name other than the Applicant name, specify.

TONTO HILLS Utility Co.

C. The Applicant is a:

☐ Corporation:☐ "C", ☒ "S", ☐ Non-Profit☐ Arizona ☐ Foreign☐ Partnership☐ Limited ☐ General☐ Arizona ☐ Foreign☐ Sole Proprietorship☐ Limited Liability Company (LLC)☐ Other (Specify) _____AZ CORP COMMISSION
DOCKET CONTROL

2009 FEB 17 A 10:30

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D. List the name, address and telephone number of the attorney for the applicant:

HARRY HOWE 480 948 0940
10505 N. 69TH STREET
SCOTTSDALE, AZ 85253

E. List the name, address and telephone number of the management contact:

DONALD J. UNTHANK 480 488 0253
11802 E. BLUE WASH RD.
CAVE CREEK, AZ 85331

F. The name, address and telephone number of Purchaser is:

IF PURCHASE IS COMPLETED
PROPOSED NAME: TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT
CONTACT: CHARLES CIVER 42265 N. OLD MINE RD.
CAVE CREEK, AZ 85331

G. List the name and telephone number of the purchaser's representative.

CHARLES CIVER 480 451 6961

H. The Purchaser is a:

☐ Municipality

☒ Improvement District

☐ Other _____

I. The purpose for the sale and/or cancellation is due to:

☒ Negotiated Sale of Asset

☐ Condemnation

☐ Other _____

I. Provide a copy of the following documents.

1. Sales or purchase agreement
2. Court order (if condemnation)
3. Corporate Resolution authorizing the liquidation of the assets, if required by the Articles of Incorporation **NOT REQ'D**

K. Have all customer security deposits been refunded? Yes ___ No N/A
If no, mark the block below that describes the proposed disposition of security deposits.☐ All security deposits will be refunded prior to or at time of closing.☒ All security deposits will be transferred to the Purchaser for refund pursuant to the terms and conditions.☐ Other (explain)L. Are there any refunds due on Main Extension Agreements? Yes ___ No ✓
If Yes, mark the block below which describes the proposed disposition of the refunds.☐ Applicant will continue to refund after the transfer. (Explain method of refunding)N/A☐ Purchaser will assume the refunding obligation in accordance with the terms of the main extension agreement.☐ Applicant will make a full refund which will be made at closing.☐ Other (explain).N/A

M. (WATER ONLY) Are there any refunds due on meter and service line installations?

Yes ☒ No ☐ If Yes, mark the block below which describes the proposed disposition of refunds.

☐ Applicant will continue to refund after the transfer pursuant to Commission Rules.

☒ Purchaser will assume the refunding obligations in accordance with Commission Rules.

☐ Applicant will make a full refund at closing.

☐ Other (explain).

10% PER YEAR FOR 10 YEARS OR AS
MANY YEARS THAT REMAIN IN THE ORIG.
10 YEAR PERIOD

DATED the _____ day of _____, 20__

Donald J. Unthank

(Signature of Authorized Representative of Applicant)

Donald J. Unthank

(Type or Print Name Here)

President

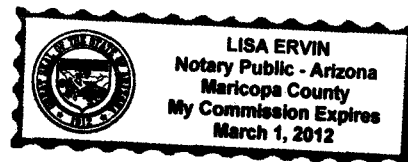
(Title)

SUBSCRIBED AND SWORN to before me on this 10th day of February, 2009

Lisa Ervin

NOTARY PUBLIC

My Commission Expires 3.1.2012



TONTO HILLS UTILITY COMPANY
11802 E. Blue Wash Road,
Cave Creek, AZ 853331
480-488-0253

Docket Control
Arizona Corporation Commission
Phoenix, Arizona 85007

February 3, 2009


The Tonto Hills Utility Company has the intent to sell the Company and is hereby applying for formal approval of the Arizona Corporation Commission of the sale, as it is described in the following.

The intended buyer will be a Domestic Water Improvement District (DWID) formed by the property owners of the Tonto Hills Community. The sole purpose of the DWID is to acquire the assets and facilities of the Tonto Hills Utility Company, and provide ongoing management to supply the Community with domestic water service.

The reasons for the described sale of the Tonto Hills Utility Company are:

1. The present Board and Officers of the Company, who have built and managed the company since its incorporation in 1987 (without compensation), wish to retire from the responsibilities for reasons of age. All the Company stockholders are in favor of the proposed sale
2. The Utility has been well developed with respect to the integrity of the physical system and securing long-term contracts for a fully adequate water supply meeting all legal standards. The Utility no longer has any serious management challenges.
3. It is in the best interest of the community to own and operate its water system, assuring continued proper maintenance of the physical system, maintenance of the water contracts, and lowest possible water rates. The owners of the Company (all of whom are Tonto Hills residents and/or property owners) favor the DWID to any possible private ownership.

Respectfully,



Donald J. Unthank, President

May 9, 2008

GOOD SIGNATURE FINAL COPY
OF AGREEMENT

Tonto Hills Utility Company
c/o Donald Unthank, President
11802 East Blue Wash
Cave Creek, AZ 85331

Dear Mr. Unthank:

This Letter of Intent (LOI) is an offer by a Tonto Hills, Arizona Domestic Water Improvement District to be formed (the "DWID" or "Buyer") to acquire all tangible and intangible assets, contractual, ownership and leasehold rights and interests held by Tonto Hills Utility Company ("THUC" or "Seller") held now and at the date of Closing except cash and marketable securities, if any (hereinafter, the "Assets"), and to assume the THUC liabilities specified in Section X below (the "Liabilities") but no other. Hereinafter the transaction is referred to as the "Acquisition." The offer is subject to the satisfactory completion of the matters described in Section Y below. The offer may be withdrawn by Buyer if an Adverse Event as defined in Section Z occurs. This offer may be accepted by your signature below and presentation to Buyer's Contact (defined below) of a THUC corporate resolution signed by a majority of the ownership interests in THUC authorizing the acquisition as described herein.

The Assets will be acquired for U.S. [REDACTED] (the "Purchase Price") to be paid to THUC at the Closing of the Acquisition. The purchase price includes an estimate of \$200,000 to pay off the Water Infrastructure Finance Authority (WIFA) debt as of December 31, 2009. The Purchase Price will be adjusted to reflect the actual WIFA debt payoff at Closing.

Notices to the "Sellers" should be delivered in writing to Donald Unthank ("Seller's Contact") and notices to the acquiring DWID should be delivered in writing to Charlie Civer ("Buyer's Contact").

Section X – Liabilities to be Assumed

Refundable Meter Deposits

Section Y – Conditions to Closing

This offer is conditioned upon, and subject to satisfactory completion of, each of the following (to be completed in an expedient manner, but in no event later than December 31, 2009, unless extended in writing by the Sellers):

Obtaining signed approval of majority percentages (as determined by Maricopa County) of the Tonto Hills property owners of a petition to form the DWID and complete the Acquisition.

Obtaining the relevant Maricopa County approval to formation of the DWID.

Forming a DWID to include all Tonto Hills lots in accordance with Arizona and Maricopa County statutes to acquire the Assets as defined above and assume the Liabilities as defined above.

Arranging for the DWID to obtain sufficient financing to fund the Purchase Price, transaction Closing costs and other costs determined exclusively by the DWID.

Obtaining assignments for the benefit of the DWID of all existing rights and contracts pertaining to the Assets, including, but not limited to the following:

Central Arizona Project Water Service Subcontract and Water Allocation
City of Scottsdale Treatment and Transportation Contract
Quitclaim Deed with Desert Mountain Properties and related Water Line
Easement
U.S. Forest Service well lease

THUC obtains approval from the Arizona Corporation Commission for the sale of the Assets, as defined above, to Buyer and on Closing retires, or transfers, its Certificate of Convenience and Necessity to Buyer.

THUC sandblasts and applies a new epoxy coating to the tank after repairing the entire tank in the event there is structural damage. THUC provides piping for a temporary tank to be connected to the system. All of the foregoing is to be done in accordance with potable water industry standards and at THUC's cost. Reference: Section 5.8 of the Preliminary Engineering Report by Arizona Engineering Company (PER), dated April 3, 2008. Seller shall notify Buyer of commencement and work in progress. Buyer has the right to periodic inspections as Buyer deems necessary. Should Buyer and Seller not agree as to the application of "industry standards", an independent engineer shall be mutually selected who will make the final recommendation.

THUC replaces the sections of potable water pipe on Blue Wash Road and Tonto Road at the two intersections of Blue Wash Road with La Plata and Tonto Roads. This replacement shall complete the potable water pipe loops at these intersections. This work shall be complete, all at THUC's cost. Reference: Table 7.1 and page 9 of the PER, dated April 3, 2008, (connect 4" waterline loops in Blue Wash and Tonto Roads). All pipe used for this work shall be new C900 PVC rated to 200 psi.

THUC pays off its WIFA loan, and any other debt or liens secured by Assets, with the proceeds from the Acquisition immediately upon Closing.

Management of THUC operates THUC in a prudent manner consistent with the past three years of activities including acquiring sufficient CAP capacity to serve the THIA property owners, except that no Assets (other than cash) to be acquired may be distributed to THUC stockholders nor new THUC liabilities be incurred, and

management of THUC immediately notifies the Buyers' Contact in the event of any Adverse Event as described in Section Z. Until the closing THUC grants Buyer's Contact and/or his designee access to THUC books and records and permission to continue evaluating THUC operations upon reasonable notice.

Section Z – Adverse Events

The following events, should they occur prior to Closing, would constitute Adverse Events which could allow the Buyer, at its option, to withdraw the offer contained herein:

The loss or adverse modification of any rights pursuant to contracts listed in Section Y.

A THUC water distribution infrastructure problem reducing or eliminating delivery of water or degrading water quality to any THUC customers for more than 48 hours.

Notice by any governmental agency of a problem with THUC operations, water system or water quality.

Assertion of a claim, assessment or lawsuit against THUC or potentially impairing THUC assets.

Any filing or threat of filing litigation by anyone against Buyer for formation of the DWID and/or encumbering the Tonto Hills owners' properties through purchase of THUC assets or obtaining associated loans.

Tonto Hills Utility Company
May 9, 2008
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Seller agrees to neither solicit nor accept any transaction involving a sale of either a majority of the stock of THUC or any of its Assets as defined above from the date of this Agreement to Closing. Seller agrees to inform any prospective minority interest THUC stockholder of the existence of this letter of intent and require their written concurrence with its terms and conditions. Seller agrees to cooperate with Buyer to facilitate the completion of the Acquisition.

Should Buyer not be successful in obtaining sufficient percentage of petitioners to satisfy Maricopa County's approval to form the DWID Seller may, at its option, terminate this Agreement.

Seller will provide title insurance for all THUC real estate assets at Buyer's cost.

Seller will be responsible for its own local, State or Federal income or sales taxes incurred as a result of this Acquisition.

Property taxes and escrow costs will be shared by Seller and Buyer pro rata based on conventional Arizona practice.

Buyer and Seller will bear their own costs in connection with the Acquisition.

This letter is intended to be legal and binding on the relevant parties. The parties intend to document the Acquisition via a comprehensive Contract and bill of sale to be negotiated and drafted consistent with this letter in good faith by Seller and Buyer.

Tonto Hills Utility Company
May 9, 2008
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Please indicate your acceptance of these terms and conditions by signing and returning a duplicate of this letter.

Members of the Committee for DWID formation and utility negotiation on behalf of the DWID to be formed ("Buyer"):

WUC May 09, 08

Don P. Rep MAY 21, 08

Ralph E. Spurgin 5/27/08

ACCEPTED by Tonto Hills Utility Company ("Seller"):

Donald Upham
Donald Upham, President

Date: 5-18-08